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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Revision of Part 22 and Part 90 of)	
the Commission's Rules to Facilitate)	
Future Development of Paging Systems)	WT Docket No. 96-18
Band by the Private Land Mobile)	
Radio Service)	
)	
Implementation of Section 309(j) of)	
the Communications Act -- Competitive)	PP Docket No. 93-253
Bidding)	

REPLY COMMENTS

A+ Network, Inc. ("A+"), by its attorneys, and pursuant to Section 1.415 of the Commission's Rules, hereby submits reply comments with regard to certain matters addressed by other parties' comments on the paging licensing proposals set forth by the Commission in the Notice of Proposed Rule Making initiating the captioned proceeding.^{1/} For its reply comments A+ states as follows:

I. BACKGROUND

A+, a Commission licensee for, and an operator of, paging facilities throughout the Southeastern United States, has a direct interest in the outcome of, and has participated in all

^{1/} Notice of Proposed Rule Making, WT Docket No. 96-18, PP Docket No. 93-253, FCC 96-52 (released February 9, 1996) (hereinafter "NPRM").

stages of, this proceeding.^{2/} The NPRM specified April 2, 1996 as the reply date in the instant proceeding, and A+ is submitting these reply comments as of that date. These comments are intended to be read in the context of paging systems entitled to the exclusive use of specified frequency blocks.

II. PROVISIONS FOR EXISTING SYSTEMS

Virtually all the commenting parties joined A+ in endorsing the Commission's proposal to protect existing site-based paging systems, both authorized and operational, from usurpation or interference by geographic licensees.^{3/} The Commission's own proposed position on this point having been validated by overwhelming support from the commenters, there remains no question that any geographic licensing procedures resulting from this proceeding must make provision for the maintenance of existing and authorized paging systems, either under their present authorizations or under "single system-wide licenses" into which they may be incorporated.^{4/}

Most initial commenters, again like A+, urged the Commission to afford existing systems protection on the basis of the mileage separations presently utilized in the 900 MHz paging

^{2/} A+ previously submitted timely comments in this proceeding, as well as comments and reply comments regarding the NPRM's "Interim Licensing Proposal".

^{3/} See, *inter alia*, comments of: Airtouch Paging ("Airtouch"), at pp. 16-17; Paging Network, Inc. ("PageNet"), at pp. 8-9; and The Paging Coalition ("Coalition"), at pp. 19-21.

^{4/} As proposed by the NPRM, at ¶ 37.

services,^{5/} rather than on the basis of the formulae for service and interference contours proposed at paragraph 52 of the NPRM.^{6/} The commenters supported this position with several cogent and telling arguments. They made it abundantly clear that existing systems were designed and constructed in reliance on current interference protection criteria, and that any shift to the Commission's proposed formulae would cause unwarranted disruption of those systems' abilities to provide efficient and effective service to the public.^{7/} In addition, it was pointed out that the utilization of the proposed formulae would require site-by-site data compilation, computation and analysis, processes which, when considered in light of the vast number of potentially affected sites, would place an almost overwhelming burden on the already strained resources of both the Commission and the paging industry.^{8/} Further, it was demonstrated that the present interference protections actually reflect a paging system's "real

^{5/} E.g., under 47 C.F.R. § 90.495(b) minimum mileage separations for co-channel 929-930 MHz facilities are premised on the "presumed" service and interference contours of a benchmark facility operating at 1000' HAAT and 1 kw. The projected 20/50 contours of that benchmark facility are the bases for the 70 mile mileage separation between transmitter sites utilizing the same frequency block.

^{6/} See, inter alia, comments of: Airtouch, at pp. 21-27; Coalition, at pp. 10-15; American Paging, Inc. ("API"), at ¶ 3; and Ameritech Mobile Services, Inc. ("Ameritech"), at pp. 2-7.

^{7/} Certain commenters also suggested that adoption of the Commission's proposed formulae would constitute impermissible, retroactive modifications of current paging licenses. See, inter alia, comments of: Ameritech, at p. 6; and Metrocall, Inc. ("Metrocall"), at pp. 9-10.

^{8/} See, inter alia, comments of Airtouch, at pp. 23-25.

world" signal propagation more accurately than do the formulae proposed by the NPRM.^{9/} In sum, the comments demonstrated that the only rational basis upon which to afford protection to incumbent 900 MHz systems is to continue to apply existing interference criteria.^{10/}

III. THE APPROPRIATE GEOGRAPHIC LICENSE AREA IS THE MTA

Although the majority of commenters joined A+ in supporting the Commission's proposal to conform geographic licensing areas to the Rand McNally designated Major Trading Areas ("MTA"),^{11/} there also was support for Basic Trading Areas ("BTA"),^{12/} Metropolitan Statistical Areas ("MSA") and Rural

^{9/} See, inter alia, comments of PageNet, at pp. 11-17 and Exhibit 1.

^{10/} A+ again urges that, in the unlikely event the Commission ignores the record evidence on this point and determines to afford protection to existing paging facilities only on the basis of contours computed in accordance with the NPRM's proposed formulae, the Commission's order adopting any such rules also should afford incumbent licensees a specified period of time (A+ suggests at least twelve months) in which to modify their authorized or existing systems so as to conform the actual contours of those systems to the contours "presumed" by the present rules. To do otherwise would be to unduly and prematurely curtail the ability of incumbent licensees' to buildout or fill-in their systems so as to provide effective paging service to the areas and populations which those existing systems were designed to serve.

^{11/} See, inter alia, comments of Airtouch, at pp. 15-16.

^{12/} See, comments of Metrocall, at p. 7.

Service Areas ("RSA"), Economic Areas ("EA"),^{13/} and incumbent licensee-defined market areas.^{14/}

A+ again submits that geographic-based paging systems will be able to provide consumers with effective and efficient service only if the specified geographic license areas are based on those regional economic activity patterns which have evolved naturally, and without regard to artificial political boundaries. For that reason, A+ urges the Commission to avoid the use of political subdivisions such as MSAs and RSAs.^{15/}

Although A+ may derive some benefit from being able to define geographic license areas in relation to its own existing and authorized facilities, A+ does not believe that such benefit would compensate for the administrative burdens attendant with the establishment and maintenance of such areas. A+ also submits that the burden upon any individual licensee would pale in comparison to the administrative nightmare that would confront the Commission, which would be required to review and analyze each licensee's claim, and to deal with ad hoc challenges to many of such claims. The Commission need only multiply the number of paging frequency blocks by the potential number of licensee-defined markets to realize that such a procedure simply is not feasible.

^{13/} See, comments of Huffman Communications, at pp. 2-4.

^{14/} See, comments of Ameritech, at p. 11.

^{15/} Surely, the Commission's cellular experience exposed the folly of conforming wireless telecommunications markets to those political boundaries.

A+ reiterates its preference for geographic license areas conforming to presently defined MTA boundaries. This preference of the MTA over the BTA or the EA is based on A+'s own experience, which has shown that subscribers inevitably seek paging service with broad area coverage throughout their natural geographic range of economic and social activity. A+'s experience also has shown that the geographic range of most subscribers' activity conforms most closely to the MTA model. Therefore, even after consideration of comments in support of alternative geographic market definitions, A+ sees no reason for the Commission to abandon its proposal to conform geographic license areas to the MTAs.

IV. MINIMUM COVERAGE REQUIREMENTS

It is clear from the initial comments in this proceeding that A+ is not alone in its concern that geographic licenses may be sought for anti-competitive or other improper purposes.¹⁶ For example, A+ and others pointed out that, as the holder of the exclusive right to initiate and expand paging service in a geographic area, a geographic licensee will have the ability both to delay the availability of paging service to the public, and to prevent an incumbent co-channel licensee from expanding its existing system to meet the needs and demands of existing and potential subscribers. No applicant should be

¹⁶ See, inter alia, comments of: API, at pp. 3-4; and Airtouch, at pp. 17-19.

allowed to acquire a geographic license either for the purpose of blocking an existing competitor's modification or expansion of its existing system, or in an attempt to "warehouse" spectrum capacity without any intention to provide service on a timely basis. For these reasons, most commenters not only support the NPRM's proposed minimum coverage requirements for geographical systems, but also urged the adoption of an additional, shorter-term (i.e., one year) buildout requirement.

A+ and several others also urged the Commission to make clear that all buildout benchmarks will be strictly enforced, without possibility of waiver or extension, through the imposition of a "death penalty" on a geographic licensee failing to meet any benchmark. Those commenters also asked that the Commission make all coverage requirements certain and absolute. They contend that to allow a geographic licensee to avoid license cancellation by providing some nebulous "substantial service" is to invite both abuse and protracted litigation.

A+ again joins in the call for clear and specific "bright line" coverage requirements and implacable buildout deadlines, all of which must be enforced through the immediate imposition of the ultimate sanction, automatic license cancellation. If the Commission does otherwise, it must expect its geographic licensing procedures to be abused for speculative and anti-competitive purposes.

V. "BORDER" ISSUE

Commenters raised the question as to how co-channel licensees of adjacent geographic markets could maximize service coverage in the border areas of their markets, so as to avoid "white areas" or "dead space" in those areas.^{17/} A+ believes that this is an issue which must be addressed by the Commission, and asks that the Commission give consideration to two factors. First, the border areas between an incumbent licensee's systems and geographic market systems should be dealt with in the same manner as the border between two geographic markets. In both cases, the only legitimate objective is maximum service to the public. Therefore, the objective being the same, there is no need for different coordination procedures. Second, A+ urges the Commission to express a strong preference for border service issues to be resolved by coordination and cooperation between the affected licensees. As A+ stated in its initial comments, the Commission's experiences with adjacent and shared-use co-channel licensees (paging, cellular and otherwise) have demonstrated that there is no more effective means for resolving interference or extension problems than good faith bargaining between licensees with relatively equal rights and needs.

^{17/} See, inter alia, comments of Comp Comm, Inc., at pp. 7-10.

VI. APPLICATION AND AUCTION PROCEDURES

Several commenters joined A+'s call for a procedure by which an incumbent licensee, upon a demonstration that its existing system already provides service to seventy percent (70%) or more of the population in a geographic market on a single frequency, becomes entitled to submit a preemptive application seeking the geographic license for that market/frequency.^{18/} As no legitimate applicant would seek an authorization where existing coverage precludes meeting the authorization's coverage requirements, no legitimate applicant would be precluded from seeking the geographic authorization.^{19/} The Commission, therefore, should adopt this preemption procedure suggested by so many commenters.

The volume of comments calling both for separate "upfront" payments for each market/frequency sought by a geographic market applicant, and for separate activity and stopping rules for each market/frequency, reflected the degree of concern the paging industry has about the potential for abuse of the geographic licensing process by speculators. Given the tenor of the NPRM on this subject, A+ cannot imagine the Commission will adopt auction procedures devoid of the safeguards recommended by almost all commenters.

^{18/} See, inter alia, comments of Airtouch, at pp. 40-43.

^{19/} A+ does not support any commenter seeking to allow only present paging licensees to be applicants for geographical licenses. A+ believes such proposals to be anti-competitive and violative of the Ashbacker doctrine. Ashbacker v. FCC, 326 U.S. 327 (1945).

CONCLUSION

A+'s greatest concern continues to be that the delay inherent in a rulemaking of this magnitude, when combined with the amount of time necessary to implement any resulting licensing procedures, will hamper expansion of capacity and coverage by the paging industry just when it is facing competitive challenges from PCS and other services. Accordingly, A+ reiterates its belief that the Commission's primary objective for this proceeding should be to implement a viable paging licensing program at the earliest possible time.

Respectfully submitted,

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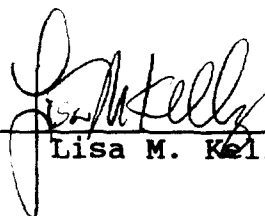
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